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DESCRIPTION

1477

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Lo Costa Rickford
Operator's Signature

10/16/83
Date

LR

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1477

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1477

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 2/4/03

Tape Number	Side A	Side B	Meter #
3	x		0.0-13.0

Committee Clerk Signature *Judith Hamma*

Minutes: opened the hearing on HB 1477.

Rep. Kasper, District 46, walked the committee through the bill which relates to protection of confidential financial information with respect to the securities and insurance industries. This will bring privacy guidelines in the law into an "opt-in" compliance with the banking law that we operate under in our state. Part 2 references Gramm-Leach-Bliley Act.

Rep. Ekstrom: Aren't there any penalties for failure to comply?

Rep. Kasper: There's no private right of action included in either section.

Chairman Keiser: Can an insurance or securities company enter into joint marketing efforts with an affiliated company without permission?

Rep. Kasper: An affiliate may need an opt in statement. I'll clarify that with Legislative Council.

Rod St. Aubyn, representing Blue Cross Blue Shield, presented an amendment which relates to compliance with HPA. There are penalties for failure to comply with HPA statutes.

Page 2
House Industry, Business and Labor Committee
Bill/Resolution Number HB 1477
Hearing Date 2/4/03

Pat Ward, Zuger, Kirmis & Smith, appeared to testify in opposition to HB 1477. (See attachment #1)

As there was no one else present who wished to testify in opposition to HB 1477, the hearing was closed.

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La Costa Rickford
Operator's Signature

10/16/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1477

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 2/12/03

Tape Number	Side A	Side B	Meter #
1		x	7.7-11.9
Committee Clerk Signature <i>Justin Hammer</i>			

Minutes: **Chairman Keiser** called for committee work on HB 1477.

Rep. Severson explained that the subcommittee has decided to carry two bills. HB 1179 will be carried as an insurance bill, HB 1477 as a securities bill and we'll kill HB 1485. The proposed amendment .0205 amends the insurance issues out of HB 1477.

Rep. Kasper: This allows the oversight that the banking and securities authorities need to look at each others business because they're dealing with customers. It's necessary for the securities industry to have this.

Rep. Nottestad: Are Rod St. Aubyn's amendments out of this?

Rep. Severson: Yes. Those were with the insurance side of the legislation.

Rep. Ekstrom moved to adopt the amendments.

Rep. Severson seconded the motion. A voice vote carried the motion to adopt.

Rep. Severson moved a Do Pass As Amended. **Rep. Boe** seconded the motion.

Results of the roll call vote were 14-0-0. **Rep. Ruby** will carry this on the floor.

LR

FISCAL NOTE
Requested by Legislative Council
02/14/2003

Amendment to: HB 1477

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

The amendments to HB 1477 remove the provisions relating to the Insurance Department and leave the provisions relating to the Securities Department. The engrossed HB 1477 will not have a fiscal impact on the General Fund or the Insurance Department budget as far as the Insurance Department is concerned.

The engrossed HB 1477 now applies only to the Securities Department and requires that the Securities Department adopt rules to implement privacy protections for customers of securities firms. The engrossed HB 1477 is not expected to have an impact on the General Fund, since the costs of any rulemaking would be included in the present budget appropriation.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

N/A

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

N/A

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

N/A

Name:	Charles E. Johnson	Agency:	Insurance Department
Phone Number:	328-4984	Date Prepared:	02/17/2003

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Yolanda Richardson
Operator's Signature

10/16/03
Date

LR

FISCAL NOTE
Requested by Legislative Council
01/21/2003

Bill/Resolution No.: HB 1477

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

This bill will have no effect on either the Insurance Department budget or the general fund. The privacy requirements as outlined in the bill will impact the insurance industry, except for the provision that requires the Insurance Commissioner to adopt rules. We anticipate that the cost of a rulemaking will be \$2,000 - \$4,000 but those expenses would be paid from the funds that will be appropriated to the Insurance Department in its pending budget. No additional funds will be required.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

N/A

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

N/A

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

N/A

Name:	Charles E. Johnson	Agency:	Insurance Department
Phone Number:	328-2440	Date Prepared:	01/27/2003

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Richard Costa
Operator's Signature

10/16/03
Date

30117.0205
Title.0300

Prepared by the Legislative Council staff for
Representative Severson
February 12, 2003

VR
2/12/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1477 IBL 2-13-03

Page 1, line 2, replace "; and to amend and reenact section" with a period

Page 1, remove line 3

Page 1, remove the underscore under lines 7 through 23

Page 1, line 24, remove the underscore under "[Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802(b)(2)]." and insert immediately thereafter "However, a customer's consent is not required under this subdivision if the information is disclosed to the extent specifically permitted or required to:

- (1) Comply with federal or state laws, rules, or guidelines for the sole purpose of compliance with requirements relating to the sale or recommendation of nondeposit investment products in a financial institution;
- (2) Comply with a properly authorized civil, criminal, or regulatory investigation, subpoena, or summons by federal, state, or local authorities; or
- (3) Respond to judicial process or governmental regulatory authorities with jurisdiction for examination, compliance, or other purposes."

HOUSE AMENDMENTS TO HB 1477 IBL 2-13-03

Page 2, remove the underscore under line 1

Page 2, remove lines 2 through 27

Renumber accordingly

Date: 2/12/03
Roll Call Vote #: |

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1477

House INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

30117.0205
.0300

Legislative Council Amendment Number

Action Taken Do Pass As Amended

Motion Made By Severson Seconded By Boe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	/		Boe	/	
Vice-Chair Severson	/		Ekstrom	/	
Dosch	/		Thorpe	/	
Froseth	/		Zaiser	/	
Johnson	/				
Kasper	/				
Klein	/				
Nottestad	/				
Ruby	/				
Tieman	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Ruby

If the vote is on an amendment, briefly indicate intent:

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Yolanda Richardson 10/16/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
February 13, 2003 8:46 a.m.

Module No: HR-28-2529
Carrier: Ruby
Insert LC: 30117.0205 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1477: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1477 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "; and to amend and reenact section" with a period

Page 1, remove line 3

Page 1, remove the underscore under lines 7 through 23

Page 1, line 24, remove the underscore under "[Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802(b)(2)]." and insert immediately thereafter "However, a customer's consent is not required under this subdivision if the information is disclosed to the extent specifically permitted or required to:

- (1) Comply with federal or state laws, rules, or guidelines for the sole purpose of compliance with requirements relating to the sale or recommendation of nondeposit investment products in a financial institution;
- (2) Comply with a properly authorized civil, criminal, or regulatory investigation, subpoena, or summons by federal, state, or local authorities; or
- (3) Respond to judicial process or governmental regulatory authorities with jurisdiction for examination, compliance, or other purposes."

Page 2, remove the underscore under line 1

Page 2, remove lines 2 through 27

Renumber accordingly

LR

2003 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1477

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La Costa Richardson 10/16/03
Operator's Signature Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1477

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 03-17-03

Tape Number	Side A	Side B	Meter #
1	XXXX		0-5325
Committee Clerk Signature <i>Lisa Van Berkom</i>			

Minutes: Chairman Mutch opened the hearing on HB 1477. All Senators were present.

HB 1477 relates to securities privacy of information.

Testimony in support of HB 1477

Representative Jim Kasper introduced the bill. He states that Gramm-Leach Bliley Act deregulated the financial services industry and allows the insurance securities and banking industry to share each other's business and sell each other's products. In North Dakota there is a law since 1985 that made information very private for banking consumers. We should have like measures for the insurance and securities. This bill is going to bring the securities method of dealing with financial information to an opt-in status. That means that if a securities company is going to share personal information of their customers they must notify the customer in advance and obtain a written consent in advance for that information to be shared.

Karen Tyler, Securities Commissioner, spoke in support of the bill. See written testimony.

She also proposed amendments. See attached.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number 1477

Hearing Date 03-17-03

Senator Nething: Did you offer these amendments in the House?

Karen: We had the opportunity to provide this information to Legislative Council which we did and for some reason they didn't make it into the original drafting.

Senator Nething: I mean when the bill was heard in the House?

Karen: It was our understanding that they had been made already, so we did not testify to this. This came as a bit of a surprise to me.

Senator Espegard: How would you interpret this bill if an out of state securities firm wanted to do business here, would they have to have the opt-in?

Karen: 99.7% of the brokerage firms that do business in North Dakota are domiciled elsewhere. So for their North Dakota clients they will have a separate policy. There are only 4 broker-dealers domiciled in North Dakota?

Senator Espegard: Would those four dealers have an extra burden in the state?

Karen: I would have to draw the conclusion that they may have an easier time as a majority of their clients are from North Dakota. There wouldn't have to be two different privacy policies.

Senator Mutch: What would there be for them to disclose?

Karen: I don't know that I have an answer for that question.

Senator Klein: How are we in relation to other states?

Karen: I believe that there are a few other states that are traveling down this path. I would say that North Dakota definitely will look different.

Senator Krebsbach: It's going to affect out of state brokerages. I understood that this would make everyone more uniform and have no impact on out of state businesses and according to you there will have a fiscal impact in the securities area.

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J. Costa Richardson
Operator's Signature

10/16/03
Date

Page 3
Senate Industry, Business and Labor Committee
Bill/Resolution Number 1477
Hearing Date 03-17-03

Karen: That is indeed the case. They will have to find ways with data to treat North Dakota clients differently.

Senator Nething: What happens if we don't pass this bill?

Karen: As far as I know the sharing of non public personal information has not been an issue in the securities industry. The clients information is the firm's most valuable asset. You also have the FCC, and the NAIC and the New York stock exchange who have rules in place for abusively using client information.

Senator Mutch: Have you had any complaints regarding this?

Karen: No, we have not.

Senator Klein: The complaints will come if we don't pass this bill because it won't be uniform with the banking industry.

Senator Nething: If you have somebody out there who is disclosing information, they are dead in the water anyway.

Testimony in opposition to HB 1477

Pat Ward, American Council of Life Insurers, spoke in opposition. He introduced

Roberta Meyer on behalf of the American Council of Life Insurers. See written testimony.

Senator Klein: So what you are saying is that securities company or an insurance company, even without the law, couldn't take the list of clients and sell it to another entity?

Roberta: They are under federal rule. The FCC has detailed regulations on that. Even without the law, we are protected.

Senator Nething: Did you testify in the House?

Roberta: No, I did not.

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Roberta Richardson
Operator's signature

10/16/03
Date

Page 4
Senate Industry, Business and Labor Committee
Bill/Resolution Number 1477
Hearing Date 03-17-03

Senator Nething: How about the amendments from the securities commissioner? Do you like them?

Roberta: I would have to look at them, but I don't think so.

End testimony.

John Michael, Farmers Insurance, arose to introduce **Betsy Nealon** of Farmers Insurance.

See written testimony.

Kent Olson, ND PIA, spoke in opposition to the bill. The joint marketing agreement has an exception on the second page, line 5, but it doesn't address insurance agents, it addresses products. We still think that as agents the GLB is re-regulation, not deregulation. 40% of our members are bank agencies. They will even cross market with in their own agency.

With an opt-in I would have to get permission from 3,000 clients and that is not reasonable.

We are seeing more and more joint marketing.

The hearing was closed. No action was taken at this time.

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1477

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-25-03

Tape Number	Side A	Side B	Meter #
Committee Clerk Signature <i>Lisa VanBerkom</i>			

Minutes: Chairman Mutch opened the discussion on HB 1477. All Senators were present.

HB 1477 securities privacy of information.

The committee reviews the amendments from Karen Tyler.

Senator Krebsbach moved to adopt the amendments. Senator Klein seconded.

Roll Call Vote: 7 Yes. 0 no. 0 absent.

Senator Klein proposed amendments to the committee.

Each committee members read and studied the amendment.

Senator Klein: These amendments keep all of this uniform.

Senator Klein moved to adopt the amendments he proposed. Senator Every seconded.

Roll Call Vote: 6 yes. 1 no. 0 absent.

Senator Klein: There hasn't been a problem on the securities side. Privacy is very important. I am not sure how necessary the bill is.

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L. Costa Richardson
Operator's Signature

10/16/03
Date

Page 2
Senate Industry, Business and Labor Committee
Bill/Resolution Number 1477
Hearing Date 03-25-03

Senator Krebsbach moved a DO NOT PASS. Senator Klein seconded.

Roll Call Vote: 4 yes. 3 no. 0 absent.

Carrier: Senator Mutch

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Yolanda Rickford
Operator's Signature

10/16/03
Date

30117.0301
Title.0400

Adopted by the Industry, Business and Labor
Committee

March 25, 2003

[Handwritten Signature]
3-25-03

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1477

Page 1, line 9, after the period insert "As used in this section, "affiliate" includes those companies that are related to one another through a management contract in which one company controls the operations of another."

Page 1, line 10, remove "registered agent, a", after the third comma insert "or", and remove the second ", an"

Page 1, line 11, remove "investment adviser representative, or an issuer" and after "state" insert "and physically located in this state"

Page 1, line 16, remove "a."

Page 1, remove lines 19 through 23

Page 2, remove lines 1 through 11

Renumber accordingly

Page No. 1

30117.0301

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

FR

Date: 3-26-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate 1477 Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendments from Securities Commissioner

Motion Made By Krebsbach Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Mutch	X				
Klein	X				
Krebsbach	X				
Nothing	X				
Heitkamp	X				
Every	X				
Espgaard	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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Richard Costa Operator's Signature 10/16/03 Date

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1477

Page 1, line 11, after "state" insert "and physically located in this state"

Page 1, line 18, after "law." insert "As used in this section, "affiliate" includes those companies that are related to one another through a management contract in which one company controls the operations of another."

Page 1, remove lines 19 through 23

Page 2, remove lines 1 through 11

Renumber accordingly

IR

Date: 3-25-03
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate 1477 Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendments from Senator Klein

Motion Made By Klein Seconded By Every

Senators	Yes	No	Senators	Yes	No
Mitch	X				
Klein	X				
Krebsbach	X				
Nethung	X				
Heitkamp		X			
Every	X				
Espeland	X				

Total (Yes) 6 No 1

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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Salvatore Riccardi 10/16/03
Operator's Signature Date

Date: 3-25-03
Roll Call Vote #: 3

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate _____ 1477 _____ Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Krebsbach Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Mutch	X				
Klein	X				
Krebsbach	X				
Nething	X				
Heitkamp		X			
Evony		X			
Espeland		X			

Total (Yes) 4 No 3

Absent 0

Floor Assignment Mutch

If the vote is on an amendment, briefly indicate intent:

To Costa Richard 10/10/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
March 26, 2003 8:28 a.m.

Module No: SR-54-5765
Carrier: Mutch
Insert LC: 30117.0301 Title: .0400

REPORT OF STANDING COMMITTEE

HB 1477, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1477 was placed on the Sixth order on the calendar.

Page 1, line 9, after the period insert "As used in this section, "affiliate" includes those companies that are related to one another through a management contract in which one company controls the operations of another."

Page 1, line 10, remove "registered agent, a", after the third comma insert "or", and remove the second ", an"

Page 1, line 11, remove "investment adviser representative, or an issuer" and after "state" insert "and physically located in this state"

Page 1, line 16, remove "a."

Page 1, remove lines 19 through 23

Page 2, remove lines 1 through 11

Renumber accordingly

2003 TESTIMONY

HB 1477

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Yolanda Richard
Operator's Signature

10/10/03
Date

Prepared Rod St. Aubyn, BCBSND
February 3, 2003

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1477

Page 2, line 27, after the underscored period insert "This section does not apply to a covered entity's component that is subject to the standards for the protection of individually identifiable health information under title 45, Code of Federal Regulations, parts 160 and 164.

5."

Renumber accordingly

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Richard Costa
Operator's Signature

10/16/03
Date

Testimony of Patrick Ward In Opposition to HB 1477

My name is Patrick Ward. I am an attorney with the law firm of Zuger Kirmlis & Smith of Bismarck. I represent several insurance companies and trade organizations in opposition to HB 1477.

The Department of Insurance has already introduced HB 1179. It amends the department's rule making authority regarding disclosure of nonpublic personal information. It provides for an opt-in. We believe the department's bill addresses the same issues as this bill draft.

The insurance industry believes that the Federal Gramm Leach Bliley Act and the Fair Credit Reporting Act contain adequate privacy protections. Insurers are not interested in selling consumer information for profit. They merely desire access to information they need in order to charge a rate that is adequate and actuarially sound. Insurers also need information in order to handle claims in an efficient and timely manner as well as to fight fraud.

HB 1477 creates an opt-in for sharing personal information with nonaffiliates. What is problematic about this bill is that it specifically requires an opt-in even in the joint marketing context. This would force certain companies, such as State Farm Insurance, to get a signed authorization from customers interested in purchasing its Fortis or Phoenix Life products so that their information could flow

from an agent to Fortis or Phoenix. Furthermore, it would require an opt-in between State Farm and its agents because the agents are considered independent contractors who sign joint marketing agreements which allow information to flow from an insured through an agent to State Farm or one of its affiliates and back through the agent to the insured. State Farm has over 40 agents and thousands of policyholders and policies in North Dakota. Multiply the number of opt-in forms by each insured, each policy, and it creates an onerous paperwork burden especially in light of the fact that under GLB's joint marketing exception, a financial institution cannot enter into a joint marketing agreement unless it also enters into a contract with the third party that prohibits the third party from disclosing or using the nonpublic personal information it receives other than to carry out the purposes for which the information was disclosed.

Section 3a of the bill is not really clear. We are not certain of the meaning of "otherwise exempted under federal law." Does it refer to the FCRA preemption on experience/transaction information?

Joint marketing agreements can be very beneficial to consumers. 1) They enable smaller financial institutions to bundle together financial products and services just as larger financial institutions do. 2) They make it possible for financial institutions to send information about new products and services that are likely to be tailored to the interests and needs of particular consumers, and 3) they make possible 24/7 communication of information about innovative new

products and services in a more cost effective and efficient manner than otherwise would be possible.

Ironically, although this bill has good intentions, it is likely to increase the amount of contact by mail and telephone between insurance companies or other financial institutions and their customers. There will need to be repeated contacts to make sure that opt-ins are on file whether such contact is made to determine whether a consumer simply failed to remember to opt-in or whether a consumer truly does not desire to have his or her nonpublic personal information shared with others. This will surely increase the cost to insurance companies and jeopardize their ability to tailor and provide products and services as efficiently and cost effectively as they would otherwise.

We urge a Do Not Pass on HB 1477.



FARMERS LEGISLATIVE ACTION GROUP

NORTH DAKOTA

Betsy M. Nealon, AAI, LUTCF
John D. Michels, PhD
Bob Fischer, SCLA, GCA
Scott Karsky
Jim Bierschbach, LUTCF
Alan Henning, LUTCF
Chad Hanson

March 14, 2003

Mr. Chairman and members of the committee, thank you for allowing me the time to voice my opposition to House Bill 1477. My name is Betsy Nealon and I am the Executive Director of North Dakota for Farmers Insurance Group. I have traveled to Bismarck today to explain the reasons for our opposition to this bill.

With \$1.7 million and growing of assets under management invested by your constituents through us, Farmers Insurance Group is concerned about House Bill 1477 and we foresee that this bill, if enacted, will be a disservice to North Dakota's citizens and the broker/dealers committed to meeting the needs of your constituents. While we recognize privacy is a vital concern for North Dakota citizens, House Bill 1477 will unfortunately cause confusion among consumers, generate more contact from financial advisors already chosen by consumers to be their trusted advisors and hamper economic development in the state. While Farmers generally supports the privacy of consumer financial information, we oppose "opt-in" legislation.

The primary reasons for our opposition are as follows:

1. This bill relies on the definition of "affiliate" that precludes various entities at Farmers from sharing information. At Farmers, the insuring entities are known as exchanges, in essence owned by their policyholders. Our policyholders from one of our exchanges own our broker/dealer Farmers Financial Solutions, a Limited Liability Corporation, or LLC. Instead of performing their own administrative functions, the exchanges contract with an entity known as an attorney-in-fact to perform these functions. The attorney-in-fact, or the management company, has no ownership control or even a seat on the boards of governors of the exchanges. The management company only manages certain aspects of the exchanges by the virtue of their contractual obligation. This bill does not rely on a sufficiently broad definition of the term "affiliate" that would include the relationship Farmers' attorney-in-fact has with its exchanges. Without a broader definition of the term, it is questionable whether the exchanges can share information about investors with the management company that administers them. Our broker/dealer Farmers Financial Solutions would not be allowed to share information with other exchanges within Farmers Insurance Group.
2. Many of our agents are also licensed in the sale of securities. Thus, they are financial advisors. Opt-in requirements will increase the number of time our financial services advisors who are also insurance agents will contact the consumer. On each occasion the financial advisor wants to offer a consumer a new product or service, the advisor will need the consumer's permission. Ironically, opt-in privacy requirements will increase the number

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Betsy Nealon
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of times that a business will intrude into a consumer's privacy. Consumers will be inundated with requests to talk about new products and will then be confused wondering why their prior written consent to discuss a new product does not apply to subsequently released products and services. Our Farmers Financial Advisors will be burdened with explaining permission slips.

2. Opt-in requirements will be expensive to implement, leading to higher insurance rates. Information sharing reduces marketing expenses by reducing the cost of soliciting our own customers and improving the chances that the customer contacted will be interested in the product or service offered. More efficient marketing practices translate into more competitive markets and lower prices for the consumer. Thus, House Bill 1477 cannot be taken as an indicator friendly to the economic development in the state. We, the insurance industry and Farmers Insurance Group in particular, just like you, are trying to manage our expenses, but not to the detriment of our customers just as you are not to the detriment of your citizens. This legislation needlessly increases costs without any resultant benefit.
3. Broker/Dealers tightly protect the personal information of our customers. If there exists a problem of selling and buying personal information, it does not stem from the actions of competing broker/dealers, especially Farmers Financial Solutions. Bills meant to reach beyond what suffices within the Gramm-Leach-Bliley Act should target industries in gross neglect of the trust their customers have placed in them.
4. Opt-in requirements will increase barriers for new entrants in the financial services industry who often must rely on consumer information from their affiliates. Without this information, new entrants will face difficulty being competitive.
5. Opt-in legislation would devastate joint marketing ventures between different institutions who offer products and services to the others' customers because one company may not offer a product offered by the other. With opt-in legislation, the exchange of information between partners in the joint venture would be virtually impossible. Cross marketing could occur if the two companies have the same owner. Smaller companies wishing to form joint ventures with other smaller companies would be disadvantaged compared to large companies capable of marketing numerous products by themselves.

Let me summarize by stating that we can support this bill if it is amended in one of the two following ways:

1. Include a definition of "affiliate" that would include those companies that are related to one another through a management contract where one company controls the operations of another.
2. Or, if the bill would substitute the word "sell" for the word "disclose", the spirit of the bills are maintained and affiliated companies such as ours are allowed to continue to do business consistent with what our customers expect of us.

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Please let me stress that we are also concerned about privacy and we believe we both can achieve our goals and still protect the privacy of the citizens while still allowing us to serve our customers and to help them plan for their retirement and financial future.

Thank you for this opportunity to address you again, and I would be happy to answer any questions.

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Yolanda Rickford
Operator's Signature

10/16/03
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STATE OF NORTH DAKOTA

**SENATE
INDUSTRY, BUSINESS, AND LABOR COMMITTEE**

**TESTIMONY
OF
ROBERTA B. MEYER
ON BEHALF OF
THE AMERICAN COUNCIL OF LIFE INSURERS
RELATING TO**

HOUSE BILL 1477

MARCH 17, 2003

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My name is Roberta Meyer. I represent the American Council of Life Insurers (ACLI). The ACLI is a national trade association representing over 400 member life insurers which account for approximately 80 percent of the assets of United States life companies and 83 percent of the assets of the insured pension business. We very much appreciate the opportunity to present our views in relation to HB 1477 to this Committee. We believe that HB 1477 is an extremely important piece of legislation.

ACLI member companies are gravely concerned by HB 1477. The ACLI strongly supports the privacy provisions set forth in Title V of the Gramm-Leach-Bliley Financial Services Modernization Act of 1999 (GLBA) and the National Association of Insurance Commissioners Model Privacy of Consumer Financial and Health Information Regulation (NAIC Model Regulation), designed to give insurers guidance in implementing their obligations under Title V of the GLBA. The GLBA and the NAIC Model Regulation (with respect to insurers) represent a delicate balancing of consumers' privacy concerns and financial institutions' need to obtain and use consumer information to serve their existing and prospective customers. The GLBA and the NAIC Model Regulation establish a comprehensive, uniform approach to privacy protection. They protect the privacy of consumers while preserving the ability of our nation's financial institutions to conduct their business and to continue to develop new products and services of benefit to consumers.

The ACLI must respectfully strongly oppose HB 1477 because it would require the North Dakota Insurance Commissioner to adopt privacy rules that significantly

deviate from both the GLBA and the NAIC Model Regulation. As passed by the North Dakota House of Representatives, the bill would require adoption of rules which:

- (1) prohibit disclosure of nonpublic personal health and financial information by an insurer to a nonaffiliated third party unless: (a) the disclosure fits within one of the exceptions in the NAIC Model Regulation; or (b) an authorization (or opt-in) is obtained from the individual who is the subject of the information ; and
- (2) notwithstanding the exceptions of the NAIC Model Regulation, require an insurance company to obtain an individual's consent (or opt-in) before disclosing the individual's information to a nonaffiliated third party under a joint marketing agreement.

The ACLI respectfully submits that contrary to its apparent intent, if enacted, HB 1477 would have the unintended consequence of requiring adoption of rules which will operate contrary to the best interests of North Dakota consumers. The imposition of an opt-in requirement before an individual's information may be disclosed by an insurer to a nonaffiliated third party under a joint marketing agreement is particularly objectionable. Such a requirement is likely to significantly jeopardize the many benefits that North Dakota consumers now derive from joint marketing agreements between financial institutions. These agreements make it possible for insurers to offer their customers an array of innovative products which

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are tailored to their particular needs and interests and provided in a cost effective, efficient manner that would not otherwise be possible.

More specifically, consumer benefits from the joint agreements between financial institutions include the following:

- (1) They enable financial institutions, particularly smaller financial institutions, to bundle together financial products and services (including insurance, banking, and securities products). This increases for consumers the array of financial products available to them and the number of financial institutions offering such combinations of financial products and services.
- (2) They make it possible for financial institutions to send information about new products and services that are tailored to the interests and needs of particular consumers.
- (3) They make possible 24-7 communication of information about innovative new products and services in a more cost effective and efficient manner than otherwise would be possible, the benefits of which evolve to consumers.

A North Dakota requirement of an opt-in prior to the sharing of nonpublic personal financial information by insurers with non-affiliates in connection with joint agreements would be the only such requirement in the country. The imposition of such a requirement in North Dakota will interfere with the smooth and efficient flow of information about products and services to North Dakota consumers. Unless they opt-in, North Dakota consumers will have a difficult time learning about new

products and services available from insurance companies and other financial services companies. (Both New Mexico and Vermont have GLBA have privacy regulations which generally track the NAIC Model Regulation but which impose general opt-in requirements. However, both of these regulations provide exceptions for disclosures pursuant to joint agreements between financial institutions. The Vermont regulation imposes some limitations on the information that may be shared under these circumstances. However, it still permits the sharing of the consumer's name, contact information and the insurer's experience and transaction information in relation to that individual without an opt-in.)

One of the major objectives of Congress in enacting the GLBA which is applicable to all financial institutions (and of the NAIC in developing the Model Regulation with respect to insurers) was to provide consumers with the opportunity to understand what policies financial institutions (or insurers) follow regarding the sharing of their personal information. At the same time, Congress and the NAIC recognized the importance information flows play in our economy. Congress and the NAIC did not want to interfere with the customary operational needs of financial institutions (or insurers). As a result, they struck a delicate balance.

They chose to preserve the ability of institutions to compete on a level playing field in the financial services arena. They also empowered consumers to take control by requiring financial institutions (or insurers) to provide customers with information regarding their privacy policies and leaving it to consumers, under appropriate

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circumstances, to choose whether or not to permit financial institutions (or insurers) with which they do business to share their personal information.

U.S. financial institutions, including the nation's insurers, rely on information flows to develop and deliver products and services to consumers. The world looks to U.S. financial markets and financial institutions as a wellspring for new products and services. Our financial institutions are constantly inventing new products and services, and improving the existing ones. The creative genius of our financial industry is based upon the continued ability to obtain and use information.

The GLBA and the NAIC Model Regulation recognize that information is the lifeblood of all financial institutions. Insurance companies, banks and securities firms cannot develop and offer products and services unless they can collect and use information from customers to determine their needs.

The GLBA and the NAIC Model Regulation preserve the ability of financial institutions (or insurers) to collect and use information so that they can continue to serve their customers' needs. At the same time, they require financial institutions (or insurers) to provide important information to consumers about what types of personal information are collected and how the information is used, as well as to provide consumers with an opportunity to opt-out from information sharing with unaffiliated third parties.

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How do the GLBA and the NAIC Model Regulation go about achieving this goal?

They require every financial institution (or insurer) to provide customers with a copy of its privacy policy and practices at the time a product or service is provided, and each year thereafter. The financial institution's (or insurer's) privacy policy is required to contain information regarding the institution's information collection and disclosure practices. A financial institution (or insurer) that intends to share a consumer's nonpublic personal information with an unaffiliated third party is required to provide notice to the consumer of the intended disclosure and provide the consumer with an opportunity to instruct the institution not to make such disclosure, *i.e.*, the customer may opt-out from the disclosure of nonpublic personal information to unaffiliated third parties. The NAIC Model Regulation also requires an insurer to obtain the customer's authorization prior to disclosure of nonpublic personal health information unless the disclosure is for the performance of specified insurance functions by or behalf of the insurer.

Under both the GLBA and the NAIC Model Regulation, financial institutions (or insurers) that offer financial products and services pursuant to joint agreements may share nonpublic personal financial information about consumers (i.e. an insurer may share nonpublic personal financial information with another financial institution with which it has a joint marketing agreement) provided:

- (1) the consumer is informed (by notice provided by the disclosing insurer) that his or her information will be shared; and

(2) the financial institution to whom the information is provided agrees by contract to maintain the confidentiality of the information.

This is a narrowly constructed provision under both the GLBA and the NAIC Model Regulation. Consumers are protected when disclosures are made in connection with these agreements.

First, GLBA Section 502(b)(2) requires a financial institution to "... fully disclose the providing of such information ..." Sections 5, 7, and 14 of the NAIC Model Regulation require that if an insurer discloses nonpublic personal financial information to a nonaffiliated third party financial institution pursuant to a joint agreement, the initial, annual, and revised notices (the insurer is required to provide consumers and customers) must include "... a separate description of the categories of information the licensee (the insurer) discloses and the categories of third parties with whom the licensee has contracted."

Second, GLBA Section 502(b)(2) requires the disclosing financial institution to enter "... into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information." Similarly, Section 14 of the NAIC Model Regulation requires a licensee to enter "... into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purpose for which the licensee disclosed the information ..."

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Third, only financial institutions qualify under the joint agreements provision. Under both GLBA and the NAIC Model Regulation, an insurer may not use the provision to share information with an entity that is not a financial institution. All financial institutions, of course, are subject to the provisions of the GLBA, including the requirement to safeguard the security as well as the confidentiality of consumer information. As a result, consumer information should be protected from possible abuse. Also, consumers reasonably *anticipate* sharing of their personal information with other *financial* institutions.

The joint agreements exception was enacted by Congress to enable smaller financial institutions to compete on a level playing field with larger financial institutions (that could offer a complete array of financial products thorough affiliates). Because smaller institutions do not typically have affiliates offering other types of financial products, Congress was concerned that they would be at a competitive disadvantage in their ability to market to prospective customers. The joint agreement provision preserves competitive balance by enabling these financial institutions to compete through arrangements with nonaffiliated financial institutions.

As noted previously, these agreements work to consumers' advantage for a variety of reasons:

- (1) The bundling of financial products and services (including insurance, banking, and securities products) made possible by these agreements increases the array of financial products available to consumers and the number of

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financial institutions offering such combinations of financial products. (Joint agreements make it possible for insurers to share information with banks and securities firms and for banks and securities firms to share information with insurers so that consumers may be offered various packages of financial products and services that meet their needs.)

(2) The sharing of nonpublic personal information between financial institutions which are parties to a joint agreement make it possible for them to better tailor the products they offer to the particular interests and needs of individual consumers.

(3) Joint agreements also make possible 24-7 communication of information about innovative new products and services in a more cost effective and efficient manner than otherwise would be possible.

In sum, *any* legislation that limits the joint agreement provision runs the risk of jeopardizing the array and the ease and efficiency with which financial products and services are currently made available to consumers. Accordingly, the imposition of a North Dakota opt-in requirement before information can be shared by insurers pursuant to joint agreements is likely to interfere with the smooth and efficient flow of information about financial products and services to North Dakota consumers.

The burden of requiring consumers to opt-in in order to share information is significant. Unless they take the affirmative steps to opt-in, North Dakota consumers

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will have a difficult time learning about new products and services available from insurance companies and other financial services companies.

To ensure that consumers have been given sufficient opportunity to make their choices known, insurers will have to send repeated communications to customers who have failed to opt-in. Opt-in, therefore, has the unintended consequence of increasing the number of times a consumer is contacted to determine whether the consumer simply failed to remember to opt-in or whether the consumer truly does not desire to have his or her nonpublic personal information shared with others. Not only is this likely to be annoying to consumers, it is also likely to increase the costs to insurers which will have to develop new mechanisms to contact consumers and to maintain records of customers who have and have not "opted in." Unfortunately, insurers' increased costs in connection with these efforts may lead to increased costs for North Dakota consumers.

Moreover, it is often unclear why consumers choose not to opt-in. Do consumers fail to opt-in because of concerns about privacy, or merely because they overlooked the response card? In this instance, commerce must be halted until the consumer's preference is determined.

In conclusion, the ACLI respectfully reiterates its grave concerns with and strong opposition to H.B. 1477. The ACL believes that the rules required to be adopted by this bill are likely to have significant unintended adverse consequences contrary to the

best interests of North Dakota consumers and financial institution insurers doing business in your state. The ACLI respectfully urges that H.B. 1477 not be reported out of the Senate Industry, Business, and Labor Committee. Again, we appreciate being given the opportunity to present our views to this Committee and would be glad to respond to any questions. Thank you.

Proposed Amendment to Engrossed House Bill 1477
Testimony of North Dakota Securities Commissioner, Karen Tyler
Before the Senate Industry, Business and Labor Committee
March 17, 2003

With the objective of enhancing uniformity between the proposed banking, insurance and securities privacy legislation, this amendment removes the language "registered agent" and "investment advisor representative" from Engrossed HB 1477. The terms "registered agent" and "investment advisor representative" identify the individual employees of a broker-dealer or investment advisor firm. In proposed bank privacy legislation, individual bank employees are not specifically identified, and in proposed insurance privacy legislation, individual insurance agents are not specifically identified. In all three industries, the individual employees of the financial institutions to which privacy legislation applies, would be expected to implement and comply with the provisions set forth in the applicable privacy law.

The proposed amendment also removes the term "issuer" from Engrossed HB 1477. An "issuer" could be any firm, in any line of business, that is engaging in the sale of securities to raise capital. To clarify this point, examples of issuers that have recently filed offerings with our agency include:

Mewbourne Energy – engages in the business of oil and gas well drilling

Essentially Yours Industries – Markets, sells, and distributes dietary supplement and personal care products

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Reed's Inc. – Manufactures and markets gourmet natural non-alcoholic beverages
Farmer's Mill and Elevator in Hankinson – an agricultural cooperative
Agraria LLC – Restaurant business

Including the term "issuer" in Engrossed HB 1477 would carry this legislation far beyond the realm of financial institutions, to which this privacy bill was intended to apply.

I respectfully request your favorable consideration of the proposed amendment to Engrossed House Bill 1477.

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